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BR6:JEMoffat

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Computation of Depreciation Deductions Following Election of  
Section 179 Expensing

In correspondence dated June 13, 1991, you asked for assistance in resolving apparent inconsistencies in Income Tax Regulations in computing depreciation deductions for listed property partially used in a trade or business and for which the taxpayer elected to expense a portion of its cost. As stated in our telephone call to Mr. Ron Eberhardt of your office on July 17, 1991, Example (7) in § 1.280F-3T(f) of the temporary Income Tax Regulations describes the most acceptable method to be used at this time for calculating a depreciation deduction for listed property when a taxpayer has partial business use and has elected to expense a portion of its cost under section 179 of the Internal Revenue Code.

Under section 179 of the Code, a taxpayer may not expense more than the basis in the property that is allocable to trade or business use. This implies that the basis allocable to trade or business use in the year of acquisition is the depreciable basis for that year. Example (7) of § 1.280F-3T(f) sets forth a procedure for computing depreciation that is inconsistent with that implied by section 179. In Example (7), the cost of the property is reduced by the amount of section 179 election, depreciation is computed on the difference, and a portion of the computed depreciation annually is allocated to trade or business use. Under this method, the cumulative deduction for depreciation and section 179 may exceed the basis allocable to trade or business use.

We are undertaking a systemic review of this situation, and we have met with a representative of the Tax Policy office of Treasury to surface and discuss the issues. It appears that any changes in the procedures for computing deductions may have to be accomplished through amending the proposed regulations, publication of amended regulations, or other items.

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Example (7) in § 1.280F-3T(f) is the method best understood by the general public. For this reason, it is prudent to continue with the procedure described in Example (7) pending a publication indicating otherwise.

In the meantime, we will keep in touch and update you on progress in this matter. If you have any questions at any time, please feel free to call me at (202) 566-3292, or John Moffat at (202) 566-3553.

(signed) Harold E. Burghart

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Harold E. Burghart